IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

CRL.A.No. 1468 of 2004()

AGAINST THE ORDER IN CRL.LP.450/2004 Dated 02/08/2004
CC.208/1999 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

.....

APPELLANT: COMPLAINANT:

JACOB GEORGE, S/O. GEORGE,
IRAVUCHIRA, AVADUKKA DESOM, CHANGAROTH AMSOM,
QUILANDY TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED:

R.V.CHERIAN, S/O. VARKHY,
KIZHAKKEKARA, KADIYANGAD AMSOM, DESOM,
QUILANDY TALUK.

BY ADV. SRI.P.K.SURESH KUMAR
PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.1468 of 2004(C)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 17th day of October, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.208/1999 in the file of the Judicial Magistrate of the First Class-II, Perambra, with respect to the offence under Section 138 of the Negotiable Instruments Act, in which the accused stands acquitted.

2. The case of the complainant is that the accused approached him on 11/10/1998 and asked for a loan of Rs.60,000/- and the complainant asked him to come on 14/10/1998 and on that day he paid him Rs.60,000/- and agreed to repay the amount within one month, and when he failed to repay the amount on demand the accused issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. Lawyer notice sent demanding payment was not replied to nor was the amount repaid.

3. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P7. Defence examined DW.1 and got marked Exts.D1 to D3.

4. The court below has found that the case set up by the accused is more probable. It is the case of the accused that he is a member of the Vyapari Vyavasayi Ekopana Samithi, Panthirikkara unit of which he is a subscriber to Paraspara Sahayanidhi conducted by the above unit and that he received the kuri amount in 1998, and at that time he handed over signed blank cheque as security. DWs.2 and 3 have supported the version of the accused who himself was examined as DW.4. DW.1 the President of the Vyapari Vyavasayi Ekopana Samithi has not supported the version of the accused. He has stated that it is not the practice of the above Samithi to obtain blank cheque leaves while disbursing the amounts. It is submitted that DWs.2 and 3 are interested witnesses. DW.2 is the surety to the accused in the kuri and also the first cousin of the accused. DW.3 is an accused in a similar case filed by the complainant. Evidently, DWs.2 and 3 are interested witnesses.

5. The trial court has found that the version of PW.1 in the box varied from his version in the complaint as he has not stated in the witness box that the accused came to his house on 11/10/1998 and requested for the loan but only stated that the accused came to his house on 14/10/1998 asking for the loan amount and he paid the amount. I find that PW.1 has not been cross-examined on the above point. Hence, the above discrepancy cannot be treated as that material to disbelieve the version. The other contention is that the handwriting and the signature in Ext.P1 cheque is in different ink. It is the version of PW.1 that a signed cheque was brought and he received the same. The fact that the Vyapari Vyavasayi Ekopana Samithi is conducting a kuri and that the accused was a subscriber and that the accused has defaulted in remitting the amounts and that Rs.8,000/- which is due from the accused was recovered from DW.2 who stood as surety are all the evidence of the accused himself. Of course it is admitted by PW.1 that the accused was a subscriber to the kuri and that he has defaulted. But I find that just because the complainant happened to be the General Secretary of the Vyapari Vyavasayi Ekopana Samithi, all his

personal transactions cannot be linked with the transactions of the Samithi. I find that the evidence of PW.1 is more reliable. I find that the execution of the cheque has been proved from the evidence of PW.1 and that the statutory presumptions have not been successfully rebutted through the evidence of DWs.1 to 4. As noted earlier DWs.2 and 3 are not disinterested witnesses. In the circumstances, the findings of the court below is set aside. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.60,000/- and in default to undergo simple imprisonment for three months. Three months time is granted to remit the amount of compensation. The accused shall appear before the court below on 17/01/2008 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

ms